

# Exhibit 1

## (Document Filed Under Seal)

1 Guido Saveri (22349)  
2       *guido@saveri.com*  
3 R. Alexander Saveri (173102)  
4       *rick@saveri.com*  
5 Geoffrey C. Rushing (126910)  
6       *grushing@saveri.com*  
7 Cadio Zirpoli (179108)  
8       *cadio@saveri.com*  
9 SAVERI & SAVERI, INC.  
10 706 Sansome Street  
11 San Francisco, CA 94111  
12 Telephone: (415) 217-6810  
13 Facsimile: (415) 217-6813

14  
15 *Lead Counsel for the  
16 Direct Purchaser Plaintiffs*

17 IN RE: CATHODE RAY TUBE (CRT)  
18 ANTITRUST LITIGATION

19 This Document Relates to:

20 *Crago, d/b/a Dash Computers, Inc., et al. v.*  
21 *Mitsubishi Electric Corporation, et al.,*  
22 Case No. 14-CV-2058-JST.

23 Master File No. 07-CV-5944-JST

24 MDL No. 1917

25 **DIRECT PURCHASER PLAINTIFFS'  
26 MOTION TO COMPEL MITSUBISHI  
27 TO PROVIDE FULL AND COMPLETE  
28 RESPONSES TO DISCOVERY RE:  
MEETINGS WITH COMPETITORS,  
SALES, AND DESTRUCTION OF  
EVIDENCE, AND FOR EVIDENTIARY  
SANCTIONS**

29 Special Master: Hon. Vaughan R. Walker  
(ret.)

30 **CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER**

1  
2                   **TABLE OF CONTENTS**  
3

|  | Page |
|--|------|
| I.     INTRODUCTION .....  | 1    |
| II.    ISSUES PRESENTED.....   | 2    |
| III.   FACTUAL BACKGROUND.....   | 4    |
| III.   ARGUMENT.....   | 12   |
| A.   Mitsubishi Should Be Compelled to Provide Further Responses to Interrogatory<br>No. 5.....  | 12   |
| B.   Mitsubishi Should Be Compelled to Provide Full and Complete Responses to<br>Interrogatory No. 12 After Numerous Orders and Failure to Answer.....     | 14   |
| C.   Mitsubishi Should Be Compelled to Provide Further Responses to Interrogatories<br>Relating to the Preservation, Loss or Destruction of Documents..... | 15   |
| D.   Mitsubishi Should Be Subject to Evidentiary Sanctions. ....   | 16   |
| V.     CONCLUSION.....   | 20   |

## **TABLE OF AUTHORITIES**

|    |   |
|----|---|
|    | Page(s)   |
| 2  |   |
| 3  | <b>Cases</b>  |
| 4  | <i>Adriana Intl. Corp. v. Lewis &amp; Co.</i> ,<br>913 F.2d 1406 (9th Cir. 1990) ..... 19             |
| 5  | <i>Brewer v. Quaker State Oil Refining Corp.</i> ,<br>72 F.3d 326 (3d Cir. 1995) ..... 3              |
| 6  |   |
| 7  | <i>Bryant v. Armstrong</i> ,<br>285 F.R.D. 596 (S.D. Cal. 2012) ..... 15                              |
| 8  |   |
| 9  | <i>F.D.I.C. v. Halpern</i> ,<br>271 F.R.D. 191 (D. Nev. 2010) ..... 12                                |
| 10 |   |
| 11 | <i>Fjelstad v. American Honda Motor Co.</i> ,<br>762 F.2d 1334 (9th Cir. 1985) ..... 18               |
| 12 |   |
| 13 | <i>Henry v. Gill Industries, Inc.</i> ,<br>983 F.2d 943 (9th Cir. 1993) ..... 18                      |
| 14 |   |
| 15 | <i>National Hockey League v. Metropolitan Hockey Club, Inc.</i> ,<br>427 U.S. 639 (1976) ..... 17, 18 |
| 16 |   |
| 17 | <i>Payne v. Exxon Corp.</i> ,<br>121 F.3d 503 (9th Cir. 1997) ..... 18                                |
| 18 |   |
| 19 | <i>Porter v. Martinez</i> ,<br>941 F.2d 732 (9th Cir. 1991) ..... 18                                  |
| 20 |   |
| 21 | <i>Rio. Props., Inc. v. Rio Int'l Interlink</i> ,<br>284 F.3d 1007 (9th Cir. 2002) ..... 17           |
| 22 |   |
| 23 | <i>Tacori Enterprises v. Beverly Jewellery Co. Ltd.</i> ,<br>253 F.R.D. 577 (2008) ..... 17           |
| 24 |   |
| 25 | <i>Wanderer v. Johnston</i> ,<br>910 F.2d 652 (9th Cir. 1990) ..... 18                                |
| 26 |   |
| 27 | <b>Rules</b>  |
| 28 | Federal Rules of Civil Procedure  |
| 29 |   |
| 30 | Rule 33 ..... 12  |
| 31 | Rule 37 ..... 17, 18, 20  |

## I. INTRODUCTION

Since its entry into this litigation two and a half years ago, Defendant Mitsubishi has played fast and loose with discovery. Direct Purchaser Plaintiffs (“Plaintiffs” or “DPPs”) submit this Motion to Compel Production of Documents and for Sanctions for Spoliation of the Same. This motion is supported by the accompanying declarations of R. Alexander Saveri (“Saveri Decl.”) and Geoffrey C. Rushing (“Rushing Decl.”).<sup>1</sup>

[REDACTED] As part of its strategy, Mitsubishi has refused to fully disclose its conspiratorial contacts with its competitors. Its responses to discovery on this critical issue have been, and remain, incomplete, untimely and questionable as to whether documents have been intentionally withheld without a legal basis. Mitsubishi has failed to provide forthright answers regarding many important issues, including its sales of CRTs and CRT products and its destruction of documents responsive to Plaintiffs' document requests.

For over a year, Mitsubishi has assured Plaintiffs that it has met its discovery obligations. It has assured Plaintiffs that its searches for responsive information and documents have been thorough and complete. It has repeatedly claimed that its inability to provide meaningful responses to certain discovery requests is due to the loss of documents and information. It is now clear, however, that these assurances have been false. Mitsubishi recently located and produced additional documents containing sales records. Mitsubishi has also informed DPPs that it has decided to search a MEVSA file server, and certain hard drives, that it had previously declined to search.

<sup>1</sup> The Saveri Declaration was previously submitted in support of DPPs' December 18, 2014 motion to compel. A courtesy copy is attached. The exhibits to the Rushing Declaration are numbered sequentially to the exhibits to the Saveri Declaration to avoid confusion.

Plaintiffs use the term “Mitsubishi” to refer to Defendants Mitsubishi Electric Corporation (“MELCO”), Mitsubishi Electric US, Inc. (“MEUS”) and Mitsubishi Electric Visual Solutions America, Inc. (“MEVSA”).

1       **II. ISSUES PRESENTED**

2       *First, Plaintiffs seek an order requiring Mitsubishi to provide a full and complete list of*  
 3       *their contacts—i.e., meetings and communications and related documents—with their*  
 4       *competitors.* Mitsubishi’s responses to interrogatories propounded by Plaintiffs over a year ago  
 5       have been untimely and incomplete. The Court has already ruled that Mitsubishi must re-produce  
 6       witnesses as a result of its failure to provide this information. See Special Master’s Order re DPPs’  
 7       Motion to Compel Supplemental Discovery Responses from Mitsubishi at 5 (Apr. 28, 2015) (Dkt.  
 8       3830) (“R&R No. 1”). Mitsubishi’s response remains incomplete. DPPs have identified numerous  
 9       meetings Mitsubishi has failed to identify.

10      *Second, Plaintiffs seek an order compelling Mitsubishi to respond to interrogatories*  
 11      *regarding its sales of CRTs and CRT products (i.e., monitors and televisions) during the class*  
 12      *period.* Mitsubishi has continually refused to provide meaningful information about its sales  
 13      claiming that its records have disappeared, and, therefore, that it simply does not know. The Court  
 14      has already twice ordered Mitsubishi to respond to this interrogatory. R&R No. 1 at 7; *see also*  
 15      Order re DPPs’ Motion to Compel Supplemental Discovery Responses from Mitsubishi at 7–8  
 16      (June 12, 2015) (Dkt. 3873) (“R&R No. 3”) (finding Mitsubishi’s supplemental response to be  
 17      “sparse”). Despite these orders of the Court and Special Master, Mitsubishi has refused to provide  
 18      meaningful responses.

19      *Third, Mitsubishi has repeatedly made assurances during the meet and confer process,*  
 20      *and to the Court, that it had searched all of its available records; these have been proven false.*  
 21      On September 24, 2015, Mitsubishi produced eight boxes of documents responsive to Plaintiffs’  
 22      document requests that it claimed it had overlooked. Among other things, these contain sales  
 23      records of televisions. In addition, on November 3, 2015, Mitsubishi informed Plaintiffs that it had  
 24      decided to search a very large volume of MEVSA documents—“gigabytes”—stored on a file  
 25      server and employees’ hard drives which it had previously considered not necessary to search.

26      *Fourth, Plaintiffs seek an order compelling Mitsubishi to respond to an interrogatory*  
 27      *seeking identification of responsive documents that have been lost or destroyed.* Despite  
 28      continually claiming that it has little or no information regarding its CRT business, Mitsubishi has

1 refused to provide reasonable explanations of 1) what records once existed; and 2) the  
 2 circumstances of the loss or destruction of these records.

3 **Fifth, Plaintiffs ask the Court to sanction Mitsubishi pursuant to Federal Rule of Civil**  
 4 **Procedure 37 for its repeated and continuing disregard of its discovery obligations.** The Court  
 5 has already found that Mitsubishi failed to fulfill its obligations in five specific instances:

- 6 • Mitsubishi failed to timely serve complete response to DPPs' Interrogatory No. 5 (at issue  
     here) requiring it to list meetings and other contacts with competitors before the depositions  
     of two employees—Masahiko Konishi and Koji Murata—involved in these meetings.  
     Approximately one month after the depositions, Mitsubishi served a supplemental response  
     listing over 50 new meetings and contacts, including several involving Messrs. Konishi and  
     Murata. The Special Master found that Mitsubishi had “repeatedly delayed responding to  
     valid discovery requests, effectively withholding relevant discovery responses and  
     preventing DPPs’ counsel from examining Mitsubishi’s witnesses on relevant documents”  
     and ordered the further deposition of the witnesses. R&R No. 1 at 3–4.
- 7 • Mitsubishi failed to serve meaningful responses to DPPs' Interrogatory No. 12 (at issue  
     here) requesting its sales of CRTs and CRT Finished Products. The Special Master found  
     Mitsubishi’s responses “deficient and order[ed] that all three Mitsubishi Defendants provide  
     thorough and complete responses to Interrogatory No 12, including new information and  
     sales figures.” *Id.* at 5.
- 8 • Mitsubishi refused to produce documents used to refresh a witness’s recollection in advance  
     of his deposition. The Special Master ordered Mitsubishi to produce the documents and  
     allow further examination of the witness—Mr. Murata—about them. *See* Special Master’s  
     Order re DPPs’ Motion to Compel Mitsubishi to Provide Testimony and Other Evidence  
     from Mr Koji Murata at 9 (May 29, 2015) (Dkt. 3859) (“R&R No. 2”).
- 9 • Mitsubishi counsel pulled a Mitsubishi witness—Mr. Murata—from a deposition during  
     examination regarding a document evidencing meetings between a Mitsubishi employee  
     and conspirators from Samsung SDI and LG that he had reviewed and approved. After  
     conferring with counsel, the witness testified that he “knew absolutely nothing about this.”  
     *Id.* at 4. The Special Master noted that this conduct “suggest[s] a degree of attorney  
     intervention and witness guidance inconsistent with appropriate norms.” The Special  
     Master ordered the deposition of the witness be resumed to allow further examination. *Id.* at  
     9.
- 10 • Mitsubishi failed to search Mr. Murata’s personal email, which he also used for business.  
     The Special Master ordered that Mitsubishi provide further information regarding its efforts  
     to preserve and search this email account and, if necessary, additional searches. *Id.* at 10.

11       In the leading case on whether a party’s failure to produce can amount to spoliation, the  
 12 Court in *Brewer v. Quaker State Oil Refining Corp.*, 72 F.3d 326, 334 (3d Cir. 1995) said a party’s  
 13 failure to produce a document can have the same practical effect as destroying it. It affirmed that,  
 14 under certain circumstances, nonproduction of evidence is rightfully characterized as **spoliation**.

1       **III. FACTUAL BACKGROUND**

2           Mitsubishi has disregarded its discovery obligations from the outset of this case. On  
 3 September 4, 2014, DPPs served their first set of interrogatories (Saveri Decl., ex. 1) and first set of  
 4 requests for production of documents (Saveri Decl., ex. 2) on Mitsubishi. Mitsubishi responded on  
 5 October 6, 2014, but failed to provide any meaningful responses regarding critical issues.<sup>3</sup>

6           Among other things, Mitsubishi failed to provide meaningful substantive responses to  
 7 Interrogatory No. 5 seeking identification of Mitsubishi's meetings and communications with  
 8 competitors during the alleged conspiracy period. This interrogatory goes to the heart of this case  
 9 and has been answered in detail by other defendants. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15           This could not have been a good faith statement about the state of its knowledge given the  
 16 importance of this issue, and the substantial investigation Mitsubishi had already performed.  
 17 Mitsubishi was first named as a defendant in this MDL in June 2013 (*see* Dkt. 1726), over 15  
 18 months before its responses, and it had responded to interrogatories propounded by the DAPs  
 19 which required it to investigate its participation in the conspiracy. On September 5, 2014,  
 20 Mitsubishi served a list of its United States, Mexico and Brazil-related contacts with defendants as  
 21 well as other contacts in the context of a customer-supplier relationship. The list was attached as an  
 22 Exhibit B to its responses (Saveri Decl., ex. 16) ("DAP Exhibit B"). Further, Mitsubishi filed a  
 23 motion for summary judgment against the DAPs two months later (on November 7, 2014) on the  
 24 grounds that there was insufficient evidence of its participation in the conspiracy. Dkt. 3037.

25           Mitsubishi also failed to provide a meaningful response to Interrogatory No. 12 seeking  
 26 information about its total sales of CRTs and/or CRT Products—another important issue. Again,  
 27

28           <sup>3</sup> Attached to the Saveri Declaration as exhibits 3 through 8.

1 Mitsubishi stated that it “has not completed its investigation of the facts responsive to this  
2 Interrogatory,” and provided no meaningful substantive information.

3 At a “meet and confer” on November 11, 2014, Mitsubishi agreed to provide supplemental  
4 answers to Interrogatory No. 5 by November 18, 2014, and agreed to provide more information  
5 “soon, possibly within a week” regarding Interrogatory No. 12, relating to its sales of CRTs and  
6 CRT Products. Saveri Decl. ¶ 2; ex. 11. At this time, the parties were scheduling the depositions of  
7 Messrs. Konishi and Murata, which the parties anticipated occurring in December. Saveri Decl.,  
8 ex. 11.

9 In addition, the parties specifically discussed that Mitsubishi’s DAP Exhibit B—which  
10 Mitsubishi proposed to supply to DPPs—was not an adequate response to DPPs’ Interrogatory No.  
11 5 because it was substantially broader than the DAPs’ interrogatories. DPPs, by contrast, requested  
12 more expansive information about Mitsubishi’s worldwide contacts with competitors. *Id.*

13 Mitsubishi failed to fulfill these promises. It served no supplemental responses by  
14 November 18, 2014, provided no further information about its sales, and—apart from assuring  
15 Plaintiffs that supplemental responses were forthcoming—failed to respond meaningfully to  
16 Plaintiffs when they followed up. Saveri Decl. ¶ 3, ex. 12. During the week of December 1,  
17 Mitsubishi said that supplemental responses “with more information” were forthcoming. Saveri  
18 Decl. ¶ 4, ex. 13. On December 5, Mitsubishi counsel stated that they had been sent to Mitsubishi  
19 for approval and verification, and “I hope we will get a quick response [s]o we can send them to  
20 you ASAP.” Saveri Decl., ex. 13.

21 Finally, on December 10, 2014, after the deposition of Mr. Murata, and the first day of the  
22 deposition of Mr. Konishi, Mitsubishi emailed a purported supplemental response to Plaintiffs’  
23 interrogatories. Saveri Decl., ex. 15.

24 The supplemental responses contained no meaningful information, however. ■■■■■  
25 ■■■■■  
26 ■■■■■  
27 ■■■■■  
28 ■■■■■

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 Counsel for DPPs immediately notified Mitsubishi of the missing exhibits. The next day,  
5 December 11—the second day of Mr. Konishi’s deposition—Mitsubishi counsel stated that “[w]e  
6 are looking into this and will get back to you on it as soon as possible.” Saveri Decl., ex. 15.  
7 Receiving no further communication from Mitsubishi, on December 18, 2014, DPPs filed a motion  
8 to compel (1) production of Exhibits A and B; (2) further response to Interrogatory No. 12  
9 regarding sales; and (3) further deposition of Messrs. Konishi and Murata. *See* DPPs’ Motion to  
10 Compel Supplemental Responses (Dec. 18, 2014) (Rushing Decl., ex. 19) (“MTC No. 1”).

11 By letter on December 19, 2014, Mitsubishi counsel stated that Exhibit B had been  
12 “inadvertently not included” with the supplemental responses. Moreover, Mitsubishi had also  
13 concluded that “to respond to DPPs’ Interrogatory 5, Mitsubishi Electric needed to update Exhibit  
14 B, which it is now in the process of doing.” Rushing Decl., ex. 20. Despite DPPs’ pending motion,  
15 Mitsubishi did not produce the Exhibit B it had intended to serve on December 10, 2014. *Id.*

16 On January 16, 2015, Mitsubishi finally served another set of supplemental responses to  
17 DPPs’ interrogatories. Rushing Decl., ex. 21. [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] On January 30, 2015, DPPs  
7 filed another motion to compel with regard to these issues. *See* DPPs' Motion to Compel Further  
8 Testimony (Jan. 30, 2015) (Rushing Decl., ex. 23) ("MTC No. 2").

9 On April 28, 2015, the Special Master issued his Report and Recommendation regarding  
10 DPPs' first motion. *See* R&R No. 1. He recommended that the Mitsubishi defendants be ordered to  
11 produce the original Exhibits A and B to their December 10, 2014 supplemental responses to  
12 interrogatories and to provide "complete substantive responses" to Interrogatory No. 12 (re: sales)  
13 within 14 days. The Special Master also indicated that he was inclined to order the further  
14 depositions of Messrs. Murata and Konishi, but gave Mitsubishi leave to submit additional  
15 briefing. *Id.* at 7.<sup>5</sup>

16 On May 26, 2015, in response to the Special Master's ruling, Mitsubishi served another set  
17 of supplemental responses to certain interrogatories. With regard to Interrogatory No. 5, Mitsubishi  
18 was ordered to provide the original Exhibit B which it had intended to attach to its December 10,  
19 2014 supplemental responses. Remarkably, it was identical to the DAP Exhibit B that Mitsubishi  
20 had served months before, in September 2014. In other words, it appears that Mitsubishi's  
21 representations and promises to provide a substantive response to DPPs' broader interrogatory  
22 were false. Instead, they were simply a means to delay providing important evidence to DPPs.<sup>6</sup>

23 [REDACTED]  
24 [REDACTED]

---

25<sup>5</sup> On June 11, 2015, the Court adopted the Special Master's R&R as an order of the Court. *See* Dkt. 3870.

26<sup>6</sup> Mitsubishi's conduct appears driven by the desire to withhold evidence while its summary  
27 judgment against the DAPs was pending, as well as to force DAPs and DPPs to depose the few  
available Mitsubishi witnesses on an incomplete record. The DAPs' summary judgment opposition  
28 was due (and filed) on December 23, 2014. Dkt. 3271.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 On May 29, 2015, the Special Master issued his Report and Recommendation regarding  
16 DPPs' second motion. *See R&R No. 2.* He recommended that Mitsubishi be ordered to make Mr.  
17 Murata available for further examination relating to the line of questioning Mitsubishi counsel had  
18 interrupted, his conference with counsel, documents used to refresh his recollection, and the search  
19 or destruction of emails in his personal account. In addition, the Special Master recommended that  
20 Mitsubishi be ordered to produce all documents used to refresh Mr. Murata's recollection and  
21 provide further information relating to the search and preservation of his email. *Id.* at 11.<sup>7</sup>

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 Also on June 12, 2015, the Special Master issued an additional Report and

27 \_\_\_\_\_  
28 <sup>7</sup> On September 11, 2015, the Court adopted the Special Master's R&R as an order of the Court.  
See Dkt. 4054.

1 Recommendation regarding DPPs' first motion. *See* R&R No. 3. He concluded that the "delayed  
 2 production of relevant discovery responses prevented the DPPs from conducting the full scope of  
 3 their examinations of Messrs Murata and Konishi" and ordered Mitsubishi to produce Mr. Murata  
 4 and deferring a decision on Mr. Konishi. *Id.* at 6–7. He also found Mitsubishi's third supplemental  
 5 response to Interrogatory No. 12 (re: sales) to be "sparse." *Id.* at 7.<sup>8</sup>

6 On June 29, 2015, the parties met and conferred regarding Mitsubishi's responses to  
 7 interrogatories, among other things. As relevant here, DPPs explained that Mitsubishi's responses  
 8 to Interrogatory No. 12 regarding sales continued to be inadequate because Mitsubishi's search for  
 9 information appeared to be incomplete. In addition, its reference to documents—as opposed to  
 10 providing a narrative response—was unwarranted. *See* G. Rushing Ltr. to G. Fuentes (July 2, 2015)  
 11 (Rushing Decl., ex. 31). Mitsubishi again assured DPPs that its search for documents was thorough  
 12 and complete. Mitsubishi insisted that most of whatever information once may have existed was  
 13 now gone, and that what little remained was not sufficient to enable it to make any meaningful  
 14 response beyond a reference to documents. Rushing Decl. ¶ 14. [REDACTED]

15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]

18 Mitsubishi assured DPPs that its search for records of conspiratorial contacts was also  
 19 thorough and complete, and that its interrogatory responses contained all responsive information.  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]

23 [REDACTED] This suggested that Mitsubishi had evidence of "unconfirmed" meetings  
 24 which it had not disclosed. Mitsubishi counsel assured DPPs that this was not the case. Rushing  
 25 Decl., ex. 31 at 2.

26 DPPs requested that Mitsubishi provide further responses to Interrogatory No. 16 seeking  
 27

---

28<sup>8</sup> On July 20, 2015, the Court adopted the Special Master's R&R as an order of the Court. *See* Dkt. 3925.

1 identification of responsive documents that have been lost or destroyed, and an explanation of their  
 2 loss or destruction. DPPs explained that Mitsubishi's limitation of its response to "purposful  
 3 destruction" was insufficient, and that a response explaining what responsive documents or  
 4 information that were "destroyed, discarded, erased, deleted, purged, or otherwise lost" was  
 5 required, as well as the specific circumstances of their destruction or other disposition. *Id.* at 2–3.

6 DPPs had also propounded, on December 19, 2014, a second set of interrogatories relating,  
 7 *inter alia*, to when Mitsubishi became aware of the case, and its efforts to preserve relevant  
 8 documents. DPPs asked Mitsubishi to provide supplemental responses to certain of these  
 9 interrogatories. *Id.* at 3–4.

10 During the week of July 13, 2015, DPPs took the depositions of the current president and  
 11 CEO of defendant MEUS—Kiyoshi Furukawa—and its former vice president of sales—Max  
 12 Wasinger. Among other things, both testified that they had not been asked to search for responsive  
 13 documents in this case, and that they did not know where any documents potentially related to  
 14 Mitsubishi's CRT or CRT Products businesses might be located. *See* Furukawa Dep. Tr. at 29:1–  
 15 31:3, 37:12–38:8, 40:1–45:25, 48:20–50:4, 72:12–75:8, 111:15–112:2 (Rushing Decl., ex. 34);  
 16 Wasinger Dep. Tr. at 25:22–26:12; 49:18–21, 65:4–69:11 (Rushing Decl., ex. 35). Mr. Wasinger  
 17 also confirmed that Mitsubishi's document retention policy required preservation of annual sales  
 18 records. Wasinger Dep. Tr. at 88:18–95:12 (Rushing Decl., ex. 35).

19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 In mid-September, 2015, Mitsubishi notified DPPs that it had become aware of additional  
9 records after the depositions of Messrs. Wasinger and Furukawa. On September 24, 2015, it  
10 produced eight additional boxes of documents. Rushing Decl. ¶ 23, ex. 40 [9/24/2014 Fuentes Ltr.  
11 to RAS]. These relate to its U.S. operations, and contain substantial sales information. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 The parties had agreed to resume the deposition of Mr. Konishi on October 1, 2015. The  
16 deposition was postponed until November 12, 2015 in order to give DPPs time to review the  
17 September 24 document production. On October 5, DPPs wrote Mitsubishi asking it to confirm that  
18 its interrogatory responses were current in light of the additional documents it had discovered.  
19 Rushing Decl., ex. 44. On October 14, 2015, Mitsubishi confirmed that it had no present intention  
20 to update its responses. Rushing Decl. ¶ 27.

21 On November 3, 2015, Mitsubishi informed DPPs that it was reviewing another large  
22 amount of records not previously searched—"gigabytes"—contained on a MEVSA fileserver and  
23 the hard drives of certain employee, including at least one belonging to an employee—Mr.  
24 Wasinger—already deposed. Rushing Decl., ex. 45. Mitsubishi said it would be producing  
25 additional MEVSA documents. *Id.* Mitsubishi acknowledged that it had been aware of the  
26 existence of these records, but had decided not to search them based on their view that it was not  
27 worth the time and effort—i.e., a "proportionality" judgment. *Id.*

1       **III. ARGUMENT**

2           Mitsubishi's conduct described above demonstrates a continuing pattern of disregard for its  
 3 discovery obligations. In addition to compelling full and complete responses to the discovery  
 4 Mitsubishi has been evading, the Court should also impose evidentiary sanctions for Mitsubishi's  
 5 abuse of discovery procedures, as explained below.

6           The obligation to provide complete responses to discovery is fundamental to the discovery  
 7 process. *See, e.g., F.D.I.C. v. Halpern*, 271 F.R.D. 191, 198 (D. Nev. 2010) ("the responding party  
 8 must make a prompt and diligent effort to investigate and provide fully responsive answers"). This  
 9 is true, even where a party does not know the complete answer to a question. It must still provide  
 10 what it knows to the best of its ability. FED. R. CIV. P. 33(b)(1)(B) (responding party must "furnish  
 11 the information available to the party").

12       **A. Mitsubishi Should Be Compelled to Provide Further Responses to  
 13 Interrogatory No. 5.**

14           Mitsubishi's behavior in connection with its response to Interrogatory No. 5 epitomizes its  
 15 gross abuse of discovery in this action. This interrogatory—served over fifteen months ago—goes  
 16 to the most important issue in DPPs' case against Mitsubishi, its participation in the conspiracy.  
 17 Yet Mitsubishi's answers remain incomplete. As explained above, from the outset, Mitsubishi has  
 18 flouted its obligations to provide a complete and truthful account of its conspiratorial conduct.

19           Its first response to these interrogatories was completely and intentionally devoid of  
 20 meaningful information, despite the fact that it had performed substantial investigation and was  
 21 preparing to file a motion for summary judgment based on the absence of evidence of its  
 22 participation in the alleged conspiracy.

23           Although it eventually identified at least twenty-two additional meetings and approximately  
 24 thirty other contacts with competitors on January 16, 2015, it intentionally delayed production of  
 25 this critical information for several months. It did so via a series of representations—i.e., promises  
 26 at meet and confers, assurances that the information would be produced shortly, verification of  
 27 incomplete discovery responses—that now appear to have been false. DPPs (and DAPs) were  
 28

prejudiced by this conduct because, *inter alia*, during this time they were taking depositions to which these contacts were relevant.<sup>9</sup>

Finally, Mitsubishi's responses to Interrogatory No. 5 remain incomplete. As noted, Mitsubishi has admitted that it has included only contacts with competitors that it can "confirm."

A horizontal bar chart illustrating the distribution of values across 24 categories. The y-axis, labeled from 5 to 24, represents the categories. Each category is represented by a black bar with a thin white outline. The length of each bar corresponds to its value. Category 5 has the longest bar, reaching approximately 5. Category 6 follows with a very long bar, ending at about 6. Categories 7 through 24 have progressively shorter bars, with some ending at 7 and others at 8 or 9.

<sup>9</sup> The DAPs were also responding to Mitsubishi's motion for summary judgment. Their opposition was filed on December 23, 2014, Dkt. 3271.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Mitsubishi should be ordered to provide full and complete responses to DPPs' Interrogatory  
9 No. 5 immediately, and should be subject to sanctions, as explained below.

10       **B. Mitsubishi Should Be Compelled to Provide Full and Complete Responses to**  
11       **Interrogatory No. 12 After Numerous Orders and Failure to Answer.**

12 Mitsubishi's refusal to fulfill its discovery obligations is similarly clear with regard to  
13 DPPs' Interrogatory No. 12, relating to Mitsubishi's sales of CRTs and CRT products during the  
14 class period, another key issue in the case.

15 As noted above, despite the Court's orders requiring it to provide a complete response to  
16 this interrogatory, [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21 Subsequent events have now shown Mitsubishi's representations about its search for and  
22 the existence of sales records to have been false. As noted above, Mitsubishi has acknowledged  
23 additional documents existed—including sales records—and that its searches for documents have  
24 been incomplete. Indeed, Mitsubishi failed to search the hard drive belonging to MEUS vice  
25 president of sales Max Wasinger in advance of his deposition. Messrs. Wasinger and Furukawa

26 \_\_\_\_\_  
27 [REDACTED]  
28 [REDACTED]

1 (and others<sup>12</sup>) also testified that they were not asked to search their documents. *See* Furukawa Dep.  
 2 Tr. at 29:1–31:3, 37:12–38:8, 40:1–45:25, 48:20–50:4, 72:12–75:8, 111:15–112:2 (Rushing Decl.,  
 3 ex. 34); Wasinger Dep. Tr. at 25:22–26:12, 49:18–21, 65:4–69:11 (Rushing Decl., ex. 35).

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Mitsubishi should be ordered to supplement its responses to DPPs' Interrogatory No. 12  
 8 immediately to provide a narrative explanation of as much of its sales information as possible. *See*  
 9 *Bryant v. Armstrong*, 285 F.R.D. 596, 603 (S.D. Cal. 2012) (“[i]f there are no other responsive  
 10 documents in Defendant's possession, custody, or control, after conducting this further attempt to  
 11 locate records, [defendant] must state so under oath and describe efforts he made to locate  
 12 responsive documents”). It should also be subject to sanctions, as explained below.

13       **C. Mitsubishi Should Be Compelled to Provide Further Responses to**  
 14       **Interrogatories Relating to the Preservation, Loss or Destruction of**  
 15       **Documents.**

16       As noted, Mitsubishi has repeatedly explained its deficient discovery responses by claiming  
 17 that most of its records relating to its CRT business have been lost. Mitsubishi, however, has  
 18 refused to provide a reasonable response to DPPs' interrogatories going to this issue. Thus,  
 19 Interrogatory No. 16 seeks identification of all responsive documents that have been lost or  
 destroyed, and an explanation of the circumstances. It provides:

20       State whether any documents or information responsive to this set of interrogatories  
 21 were destroyed, discarded, erased, deleted, purged, or otherwise lost. If Your answer  
 22 is in any way in the affirmative: (a) describe in detail the contents of each such  
 23 document or information and the date it was destroyed, discarded, erased, deleted,  
 24 purged or lost; (b) identify each person who had any role or responsibility in  
 destroying, discarding, erasing, purging, deleting or losing of each such document  
 or information; and (c) describe in detail the circumstances under which each such  
 document or information was destroyed, discarded, erased, deleted, purged, or lost.

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 Mitsubishi's supplemental response is plainly insufficient. While it admits that responsive  
14 documents "may have been destroyed, discarded, erased, deleted, purged, or otherwise lost," the  
15 general statement that documents were likely "discarded in the ordinary course of business" is self-  
16 serving and lacks meaningful detail. It also contradicts its first response that nothing was  
17 "purposefully" discarded. The notion that annual sales records would have been discarded in the  
18 ordinary course is also contradicted by Mr. Wasinger's testimony that Mitsubishi's document  
19 retention policy required their preservation.

20 The information DPPs seek is important. It is relevant to ensure that all evidence is located,  
21 and to put into context Mitsubishi's claims that no evidence of its participation in the conspiracy  
22 exists. It also goes to the issue of spoliation. Mitsubishi should be ordered to provide immediately  
23 full and complete responses to these interrogatories, and should be subject to sanctions, as  
24 explained below.

25 **D. Mitsubishi Should Be Subject to Evidentiary Sanctions.**

26 DPPs submit that the Court should sanction Mitsubishi for its misconduct by ruling that  
27 [REDACTED]  
28 [REDACTED] As noted above, [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED] Mitsubishi has argued at great length that [REDACTED]  
 5 should not be admissible at trial and should not be considered on summary judgment. *See*  
 6 MELCO's Motion for Summary Judgment at 4–8 (Nov. 7, 2014) (Dkt. 3037); MELCO's Motion *in*  
 7 *Limine* No. 1 (Feb. 13, 2015) (Dkt. 3601).

8 Rule 37(b) of the Federal Rules of Civil Procedure authorizes sanctions against a party who  
 9 “fails to obey an order to provide or permit discovery under Rule 37(a).” Such sanctions include:

- 10           (i) directing that the matters embraced in the order or other designated facts be  
 11 taken as established for purposes of the action, as the prevailing party claims;  
 12           (ii) prohibiting the disobedient party from supporting or opposing designated  
               claims or defenses, or from introducing designated matters in evidence.<sup>14</sup>

13           Rule 37 also allows the Court to strike pleadings (Rule 37(b)(2)(A)(iii)) or even dismiss an  
 14 action (Rule 37(b)(2)(A)(v)). A trial court has broad discretion to impose sanctions under Rule 37.  
 15 *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 642–643 (1976) (reversing Circuit  
 16 Court and affirming District Court's order dismissing plaintiff's complaint in antitrust case for  
 17 willful failure to timely respond to interrogatories).

18           Courts generally consider five factors in deciding to grant a motion for sanctions under  
 19 Rule 37(b)(2)(A): “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s  
 20 need to manage its docket; (3) the risk of prejudice to [the party seeking sanctions]; (4) the public  
 21 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
 22 sanctions.” *Tacori Enters. v. Beverly Jewellery Co. Ltd.*, 253 F.R.D. 577, 582 (2008) (quoting *Rio.*  
 23 *Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002)) (brackets in original).

24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 <sup>14</sup> See Fed. R. Civ. P. 37(b)(2)(A).

1 “Where a court order is violated, the first two factors support sanctions and the fourth factor cuts  
 2 against a default. Therefore, it is the third and fifth factors that are decisive.” *Payne v. Exxon*  
 3 *Corp.*, 121 F.3d 503, 507, 510 (9th Cir. 1997) (affirming dismissal of case for failure to respond to  
 4 court ordered discovery).

5 In deciding whether to grant a motion for sanctions, the Court may “properly consider all of  
 6 a party’s discovery misconduct . . . , including conduct which has been the subject of earlier  
 7 sanctions.” *Id.* at 508. “A district court has the discretion to impose the extreme sanction of  
 8 dismissal if there has been ‘flagrant, bad faith disregard of discovery duties.’” *Porter v. Martinez*,  
 9 941 F.2d 732, 733 (9th Cir. 1991) (quoting *Wanderer v. Johnston*, 910 F.2d 652, 655–56 (9th Cir.  
 10 1990) (citing *Nat’l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639 (1976))). “[The Ninth  
 11 Circuit] has stated that ‘disobedient conduct not shown to be outside the control of the litigant’ is  
 12 all that is required to demonstrate willfulness, bad faith, or fault.” *Henry v. Gill Indus., Inc.*, 983  
 13 F.2d 943, 948 (9th Cir. 1993) (quoting *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1341 (9th  
 14 Cir. 1985)).

15 Mitsubishi’s conduct in this action plainly warrants sanctions. First, it has violated two  
 16 Court orders. With regard to Interrogatory No. 5, the Court has already found that Mitsubishi  
 17 “repeatedly delayed responding to valid discovery requests, effectively withholding relevant  
 18 discovery responses and preventing DPPs’ counsel from examining Mitsubishi’s witnesses on  
 19 relevant documents.” R&R No. 1 at 3–4. As shown above, Mitsubishi’s response to this  
 20 interrogatory remains substantially incomplete.

21 Similarly, with regard to Interrogatory No. 12, the Court found Mitsubishi’s responses  
 22 “deficient and order[ed] that all three Mitsubishi Defendants provide thorough and complete  
 23 responses to Interrogatory No 12, including new information and sales figures.” *Id.* at 5; *see also*  
 24 R&R No. 3 at 7–8. Mitsubishi refused to do so on the grounds that its search for records had been  
 25 thorough and complete and that no records existed sufficient to allow it to respond meaningfully.  
 26 Again, as shown above, both of these assertions have been proven false, and Mitsubishi’s response  
 27 to Interrogatory No. 12 remains incomplete.

1       Second, the Court has already found that Mitsubishi improperly interfered with DPPs’  
 2 examination of one of its witnesses, failed to properly search the email of that witness, and  
 3 improperly withheld documents used to refresh the recollection of a witness. Mitsubishi’s  
 4 continued violations of its discovery obligations in this context compels the conclusion that  
 5 sanctions are necessary to ensure Mitsubishi’s future compliance both with the Court’s orders as  
 6 well as its discovery obligations.

7       The five factors noted above also favor the imposition of the sanction DPPs propose. As  
 8 noted above, where the violation of a Court order is involved, as here, the first two factors support  
 9 the imposition of sanctions.

10      The third factor—the risk of prejudice to plaintiffs—also militates in favor of sanctions.  
 11 Mitsubishi’s conduct has deprived DPPs of important evidence. “A [party] suffers prejudice if the  
 12 [opposing party’s] actions impair the [party’s] ability to go to trial or threaten to interfere with the  
 13 rightful decision in the case.” *Adriana Int’l Corp. v. Thoeren*, 913 F.2d 1406, 1412 (9th Cir. 1990);  
 14 *see also Payne*, 121 F.3d at 508 (belated production of information does not preclude prejudice).

15      The fourth factor—the public policy favoring disposition of cases on their merits—also  
 16 militates in favor of sanctions. While normally, as noted above, this factor “cuts against a default,”  
 17 DPPs do not propose that any facts be found against Mitsubishi, or that it be deprived of any  
 18 substantive defense. Rather, DPPs propose simply that the jury be allowed to consider evidence.  
 19 Mitsubishi would remain free to submit counter evidence and argument. Indeed, as the DAPs have  
 20 explained, this evidence will likely be admissible in any event. *See* DAPs’ Opposition to MELCO’s  
 21 Motion for Summary Judgment at 4–7 (Dec. 23, 2014) (Dkt. 3271); DAPs’ Response in Opposition  
 22 to MELCO’s Motion *in Limine* No. 1 (Feb. 27, 2015) (Dkt. 3644). The proposed sanction will  
 23 allow the disposition of the case on the merits, and therefore this factor also supports sanctions.

24      Finally, the fifth factor—the availability of less drastic sanctions—also militates in favor of  
 25 sanctions here. Plaintiffs are seeking a reasonable and limited set of evidentiary sanctions that  
 26 relate directly to the most important factual issue implicated by Mitsubishi’s improper conduct.  
 27 Mitsubishi’s continued violation of its obligations despite the Court’s previous orders demonstrates  
 28 the necessity of a sanction beyond an order simply requiring it to provide the discovery it withheld.

1       **V. CONCLUSION**

2                  For all the reasons stated above, DPPs respectfully submit that the Court find that the  
3 Mitsubishi defendants be compelled to: (1) provide full and complete responses to DPPs'  
4 September 4, 2014 and December 19, 2014 interrogatories; and (2) order that Mitsubishi is subject  
5 to evidentiary sanctions pursuant to Rule 37, as follows:

6                  [REDACTED]

7                  [REDACTED]

8                  Dated: December 4, 2015

9                  By: /s/ R. Alexander Saveri

10                 R. Alexander Saveri  
11                 **SAVERI & SAVERI, INC.**  
12                 706 Sansome Street  
13                 San Francisco, CA 94111  
14                 Telephone: (415) 217-6810  
15                 Facsimile: (415) 217-6813

16                  By: /s/ Joseph C. Cotchett

17                 Joseph C. Cotchett  
18                 **COTCHETT, PITRE & McCARTHY, LLP**  
19                 840 Malcolm Road, Suite 200  
20                 Burlingame, CA 94010  
21                 Telephone: (650) 697-6000  
22                 Facsimile: (650) 697-0577

1 Guido Saveri (22349)  
2       *guido@saveri.com*  
3 R. Alexander Saveri (173102)  
4       *rick@saveri.com*  
5 Geoffrey C. Rushing (126910)  
6       *grushing@saveri.com*  
7 Cadio Zirpoli (179108)  
8       *cadio@saveri.com*  
9 SAVERI & SAVERI, INC.  
10 706 Sansome Street  
11 San Francisco, CA 94111  
12 Telephone: (415) 217-6810  
13 Facsimile: (415) 217-6813

*Lead Counsel for the  
Direct Purchaser Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION**

Master File No. 07-CV-5944-JST

MDL No. 1917

### This Document Relates to:

*Crago, d/b/a Dash Computers, Inc., et al. v.  
Mitsubishi Electric Corporation, et al.,  
Case No. 14-CV-2058-JST*

**DECLARATION OF GEOFFREY C.  
RUSHING IN SUPPORT OF DIRECT  
PURCHASER PLAINTIFFS' MOTION  
TO COMPEL MITSUBISHI TO  
PROVIDE FULL AND COMPLETE  
RESPONSES TO DISCOVERY RE:  
MEETINGS WITH COMPETITORS,  
SALES, AND DESTRUCTION OF  
EVIDENCE, AND FOR EVIDENTIARY  
SANCTIONS**

Special Master: Hon. Vaughan R. Walker  
(ret.)

**CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER**

1 I, GEOFFREY C. RUSHING, declare:

2       1. I am of counsel to Saveri & Saveri, Inc., which the Court has appointed as Lead  
3 Counsel for the Direct Purchaser Plaintiffs (“DPPs”) in this action. I have been involved in almost  
4 every aspect of this case since its inception. I submit this declaration in support of Direct  
5 Purchaser Plaintiffs’ Motion to Compel Mitsubishi to Provide Full and Complete Responses to  
6 Discovery Re: Meetings With Competitors, Sales, and Destruction of Evidence, and for  
7 Evidentiary Sanctions. Unless otherwise indicated, I make this declaration of my own personal  
8 knowledge, and if called upon to do so, could and would testify competently to the facts  
9 contained herein.

10       2. Attached hereto as Exhibit 18 is a true and correct copy of Samsung SDI Co.,  
11 Ltd.’s Responses to Dell Plaintiffs’ First Set of Interrogatories, dated November 25, 2013.

12       3. Attached hereto as Exhibit 19 is a true and correct copy of DPPs’ Motion to  
13 Compel Supplemental Responses from the Mitsubishi Defendants, dated December 18, 2014.

14       4. Attached hereto as Exhibit 20 is a true and correct copy of a letter from Gabriel A.  
15 Fuentes to Douglas A. Millen regarding Mitsubishi’s supplemental interrogatory responses served  
16 on DPPs on December 10, 2014, dated December 19, 2014.

17       5. Attached hereto as Exhibit 21 is a true and correct copy of Mitsubishi Electric  
18 Corporation’s Supplemental Response to Direct Purchaser Plaintiffs’ First Set of Interrogatories,  
19 dated January 16, 2015.

20       6. Attached hereto as Exhibit 22 is a true and correct copy of excerpts of the  
21 deposition of Mr. Koji Murata, taken at the offices of Jenner & Block LLP, 321 North Clark  
22 Street, Chicago, Illinois, on December 8–9, 2014, and at the Law Office of Vaughn R. Walker,  
23 Four Embarcadero Center, San Francisco, California, on July 9, 2015.

24       7. Attached hereto as Exhibit 23 is a true and correct copy of DPPs’ Motion to  
25 Compel Testimony and Other Evidence Sought in the Deposition of Mr. Koji Murata, dated  
26 January 30, 2015.

27       8. Attached hereto as Exhibit 24 is a true and correct copy of Mitsubishi Electric  
28 Corporation’s Third Supplemental Response to Direct Purchaser Plaintiffs’ Interrogatories No. 5,

1 10–12, dated May 26, 2015.

2 9. Attached hereto as Exhibit 25 is a true and correct copy of Mitsubishi Electric US,  
3 Inc.'s Supplemental Response to Direct Purchaser Plaintiffs' Interrogatory No. 12, dated May 26,  
4 2015.

5 10. Attached hereto as Exhibit 26 is a true and correct copy of Mitsubishi Electric  
6 Visual Solutions America, Inc.'s Supplemental Response to Direct Purchaser Plaintiffs'  
7 Interrogatory No. 12, dated May 26, 2015.

8 11. Attached hereto as Exhibit 27 is a true and correct copy of Mitsubishi Electric's  
9 Response to DPPs' Motion to Compel Supplemental Discovery, dated May 26, 2015.

10 12. Attached hereto as Exhibit 28 is a true and correct copy of a letter from Gabriel A.  
11 Fuentes to R. Alexander Saveri listing the Bates ranges for the documents Mr. Murata reviewed  
12 in preparation for his deposition, dated June 12, 2015.

13 13. Attached hereto as Exhibit 29 is a true and correct copy of a document produced  
14 by Mitsubishi in this litigation bearing Bates number range ME00024873–89. It is marked as  
15 deposition exhibit no. Dep. ex. 8214. Attached hereto as Exhibit 30 is a true and correct copy of a  
16 certified translation of that document to English, marked as deposition exhibit no. 8214E.

17 14. On June 29, 2015 counsel for DPPs organized a meet and confer conference with  
18 counsel for Mitsubishi to discuss various discovery issues. Attached hereto as Exhibit 31 is a true  
19 and correct copy of my letter to Gabriel A. Fuentes of Jenner & Block LLP, dated July 2, 2015,  
20 confirming that conference. During the conference, Mitsubishi assured DPPs that its search for  
21 documents was thorough and complete. Mitsubishi stated that most of whatever information once  
22 may have existed was now gone, and that what remained was not sufficient to enable it to make  
23 any meaningful response beyond a reference to documents.

24 15. Attached hereto as Exhibit 32 is a true and correct copy of Mitsubishi Electric  
25 Defendants' Surreply to DPPs' Motion to Compel Supplemental Discovery, dated June 10,  
26 2015.

27 16. Attached hereto as Exhibit 33 is a true and correct copy of excerpts of the 30(b)(6)  
28 deposition of Mitsubishi Electric Corporation by Mr. Hitoshi Tsukamoto, taken at the offices of

1 Jenner & Block LLP, 321 North Clark Street, Chicago, Illinois, on September 22–23, 2014.

2       17. Attached hereto as Exhibit 34 is a true and correct copy of excerpts of the  
3 deposition of Mr. Kiyoshi Furukawa, taken at the offices of Jenner & Block LLP, 633 West Fifth  
4 Street, Los Angeles, California, on July 14, 2015.

5       18. Attached hereto as Exhibit 35 is a true and correct copy of excerpts of the  
6 deposition of Mr. Max Wasinger, taken at the offices of Jenner & Block LLP, 633 West Fifth  
7 Street, Los Angeles, California, on July 16, 2015.

8       19. Attached hereto as Exhibit 36 is a true and correct copy of Mitsubishi Electric  
9 Corporation's Fourth Supplemental Response to Direct Purchaser Plaintiff Crago, d/b/a Dash  
10 Computers, Inc.'s First Set of Interrogatories to Defendants Mitsubishi, Thomson and TDA, dated  
11 July 28, 2015.

12       20. Attached hereto as Exhibit 37 is a true and correct copy of Mitsubishi Electric US,  
13 Inc.'s Second Supplemental Response to Direct Purchaser Plaintiff Crago, d/b/a Dash Computers,  
14 Inc.'s First Set of Interrogatories to Defendants Mitsubishi, Thomson and TDA, dated July 28,  
15 2015.

16       21. Attached hereto as Exhibit 38 is a true and correct copy of Mitsubishi Electric  
17 Visual Solutions America, Inc.'s Second Supplemental Response to Direct Purchaser Plaintiff  
18 Crago, d/b/a Dash Computers, Inc.'s First Set of Interrogatories to Defendants Mitsubishi,  
19 Thomson and TDA, dated July 28, 2015.

20       22. Attached hereto as Exhibit 39 is a true and correct copy of Mitsubishi Electric  
21 Defendants' Supplemental Response to Direct Purchaser Plaintiff Wettstein and Sons, Inc.'s First  
22 Set of Interrogatories to Mitsubishi Defendants, dated July 28, 2015.

23       23. Attached hereto as Exhibit 40 is a true and correct copy of a letter from Gabriel A.  
24 Fuentes to R. Alexander Saveri regarding a supplemental production of documents from  
25 Defendant Mitsubishi Electric Visual Solutions America, Inc., dated September 24, 2015.

26       24. Attached hereto as Exhibit 41 is a true and correct copy of a document produced  
27 by Mitsubishi in this litigation bearing Bates number ME00154189.

28       25. Attached hereto as Exhibit 42 is a true and correct copy of a document produced

1 by Mitsubishi in this litigation bearing Bates number ME00154067.

2 26. Attached hereto as Exhibit 43 is a true and correct copy of a document produced  
3 by Mitsubishi in this litigation bearing Bates number ME00154401.

4 27. Attached hereto as Exhibit 44 is a true and correct copy of my letter to Gabriel A.  
5 Fuentes of Jenner & Block LLP, dated October 5, 2015, asking Mitsubishi to confirm that its  
6 interrogatory responses were current in light of the additional documents it had discovered. Mr.  
7 Fuentes confirmed to me by telephone on October 14, 2015 that Mitsubishi had no present  
8 intention to update its responses.

9 28. On November 3, 2015, counsel for Mitsubishi informed DPPs by telephone that it  
10 was reviewing another large amount of records not previously searched—"gigabytes"—contained  
11 on a MEVSA fileserver and the hard drives of certain employee, including at least one belonging  
12 to an employee—Max Wasinger—already deposed. Attached hereto as Exhibit 45 is a true and  
13 correct copy of my e-mail exchange with Gabriel A. Fuentes memorializing that teleconference.

14 29. Attached hereto as Exhibit 46 are true and correct copies of a document produced  
15 by Hitachi in this litigation bearing Bates number range HDP-CRT00025965–66 and a certified  
16 translation of that document to English. They are marked as deposition exhibit nos. 2376 and  
17 2376E.

18 30. Attached hereto as Exhibit 47 is a true and correct copy of a document produced  
19 by Chunghwa in this litigation bearing Bates number range CHU00028528–29. It is marked as  
20 deposition exhibit no. 8340C. Attached hereto as Exhibit 48 is a true and correct copy of a  
21 certified translation of that document to English, marked as deposition exhibit no. 8340E.  
22 Attached hereto as Exhibit 49 is a true and correct copy of a certified translation of that document  
23 to Japanese, marked as deposition exhibit no. 8340J.

24 31. Attached hereto as Exhibit 50 is a true and correct copy of a document produced  
25 by Samsung SDI in this litigation bearing Bates number range SDCRT-0087379–80.

26 32. Attached hereto as Exhibit 51 are true and correct copies of a document produced  
27 by Chunghwa in this litigation bearing Bates number CHU00031154 and a certified translation of  
28 that document to English. They are marked as deposition exhibit nos. 8201 and 8201E.

1       33. Attached hereto as Exhibit 52 is a true and correct copy of a document produced  
 2 by Mitsubishi in this litigation bearing Bates number ME00088280. It is marked as deposition  
 3 exhibit no. 8206. Attached hereto as Exhibit 53 is a true and correct copy of a certified translation  
 4 of that document to English, marked as deposition exhibit no. 8206E.

5       34. Attached hereto as Exhibit 54 is a true and correct copy of a document produced  
 6 by Mitsubishi in this litigation bearing Bates number ME00088467. It is marked as deposition  
 7 exhibit no. 8203. Attached hereto as Exhibit 55 is a true and correct copy of a certified translation  
 8 of that document to English.

9       35. Attached hereto as Exhibit 56 is a true and correct copy of a document produced  
 10 by Samsung SDI in this litigation bearing Bates number range SDCRT-0087970–76. Attached  
 11 hereto as Exhibit 57 is a true and correct copy of a certified translation of that document to  
 12 English.

13       36. Attached hereto as Exhibit 58 is a true and correct copy of a document produced  
 14 by Philips in this litigation bearing Bates number range PHLP-CRT-015923–25. It is marked as  
 15 deposition exhibit no. 2285.

16       37. Attached hereto as Exhibit 59 is a true and correct copy of a document produced  
 17 by Mitsubishi in this litigation bearing Bates number range ME00024892–99. It is marked as  
 18 deposition exhibit no. 8212. Attached hereto as Exhibit 60 is a true and correct copy of a certified  
 19 translation of that document to English, marked as deposition exhibit no. 8212E.

20       38. Attached hereto as Exhibit 61 is a true and correct copy of a document produced  
 21 by Mitsubishi in this litigation bearing Bates number ME00024890. It is marked as deposition  
 22 exhibit no. 8213.

23       39. Attached hereto as Exhibit 62 is a true and correct copy of a document produced  
 24 by Samsung SDI in this litigation bearing Bates number range SDCRT-0006041–42. It is marked  
 25 as deposition exhibit no. 635. Attached hereto as Exhibit 63 is a true and correct copy of a  
 26 certified translation of that document to English, marked as deposition exhibit no. 635EF.

27            ///

28            ///

40. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on December 4, 2015 at San Francisco, California.

/s/ Geoffrey C. Rushing

Geoffrey C. Rushing

RUSHING DECL. ISO DPPS' MOTION TO COMPEL MOTION TO COMPEL MITSUBISHI TO PROVIDE RESPONSES TO DISCOVERY, AND FOR EVIDENTIARY SANCTIONS; No. 07-CV-5944-JST